THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO : 1398 of 2006

DATE: 28.1.2006

Between:

M/s Srilakshmi Srinivasa Wines (A proprietary Concern) office at 4-73, Pillarya Street, Yanam-533 464, rep. by its authorized person Mr. D. Somasekara Rao S/o D. Nageswar Rao aged about 46 years, Occ. Business, R/o Yanam, State of Pondicherry

Petitioner……..

And

1. The Commissioner of Prohibition and Excise of Andhra Pradesh, Office at OPP: Gandhi Bhavan, Nampally, Hyderabad and others.

Respondents……..

-

-

-

-

-

-

-

-

-

ORDER:

Heard the learned counsel appearing for petitioner as well as the learned Government Pleader for Prohibition and Excise.

Petitioner questions the order of the first respondent in rejecting the applications for grant of through transport permits in respect of three applications dated 19.12.2005 as illegal, arbitrary and seeks a direction to direct the first respondent to consider three applications and pass appropriate orders in the light of the judgment of this court in W.P.No. 435 of 2006 dated 6.1.2006.

It is stated that the petitioner filed four applications for the Through Transport Permit and out of four applications one application has been considered and other three applications dated 19.12.2005 were rejected by the impugned order dated 5.1.2006 on a comparative state of consumption particulars per month on the monthly average receipts, the consumption of IMFL liquor in Yanam is more compared to the similarly situated shops in the neighboring areas of East Godavari District and therefore, it has been presumed that the excess quantity of Yanam are being diverted to the neighboring districts in Andhra Pradesh and therefore issuance of Through Transport Permit is rejected.

Learned Government Pleader appearing for the respondent submitted that the Government framed rules called A.P. Excise (Import, Export, Transport Indian Liquor

and Foreign Liquor) permission Rules, 2005 in G.O.Rt No. 996, Excise Department, dt 25.10.2005 and as per Rule 16(5) the Commissioner of Prohibition and Excise is entitled to make such an enquiry and satisfy with regard to the moment of liquors in contravention of any law for the time being in force and that it will not be unloaded within the state of A.P. then only entitled to issue a permit for transportation.

If there is any contravention of the provisions of the A.P. Excise Act and the rules made therein, it is always open to the respondents to take appropriate action. Without there being any specific contravention of any law, the impugned order is not in accordance with Section 11 r/w Rule 16(5) of the A.P. Excise (Import, Export, Transport Indian Liquor and Foreign Liquor) Permission Rules, 2005.

Having regard to the facts and circumstances of the case, the first respondent is directed to consider the applications filed by the petitioner and pass fresh orders in accordance with Rule 16(5) of the A.P. Excise and Permission Rules, 2005 without reference to this impugned order, within a week from the date of receipt of a copy of this order.

Writ Petition is disposed of accordingly. No order as to costs.

_____

V.ESWARAIAH, J

Date: 28.01.2006.

KA

Note: Furnish copy in two days.

B/o ka